

CIVIL REVISION APPLICATION NO. 99 OF 1997.

Date of decision: 21-4-1997

For approval and signature

The Honourable Mr. Justice R. R. Jain

Mr. Suresh M. Shah & Mr. Mehul S. Shah, advocates for the applicants.

Mr. R.S. Sanjanwala, advocate for the respondent.

1. Whether Reporters of Local Papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of judgment? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

Coram: R.R.Jain, J.  
April 21, 1997.

Oral judgment:

Rule. Mr. Sanjanwala waives service of rule.

The dispute relates to execution of a foreign award, in India, under the provisions of Arbitration and Conciliation Ordinance, 1996 ( which now has become

"Act"). The applicant is a foreign corporate body whereas the opponent is a partnership firm carrying on business in India. It appears that as some disputes arose between the parties, the same were referred to a domestic Tribunal as per the provisions of the Arbitration Act, 1950, in force in United Kingdom. The domestic Tribunal resolved the disputes and passed award on 25.2.1996 in favour of the applicant for a sum of US \$1,53,650 (equivalent to Rs.56,69,685/-) with interest at the rate of 18% per annum from 1.1.1995 till the date of the award. Since the opponent against whom the award operates is carrying on business and is having property within the territory of India, the applicant initiated execution proceedings No.3 of 1996 in the Court of District Judge, Bhavnagar (Gujarat), India, under sections 36, 49 and 58 of the Arbitration and Conciliation Ordinance, 1996 (hereinafter referred to as the "said Ordinance" or the "said Act"). After institution, the matter was assigned to the Court of Joint District Judge, Bhavnagar, who, after hearing, issued appropriate process. In response to the process, the opponent appeared and filed objections Ex.16, challenging maintainability on several grounds. However, the learned Joint District Judge, Bhavnagar, after hearing both the parties, rejected the objections and directed the applicant to take further steps for execution of award.

Aggrieved by this order, the opponent has filed this application under Section 115 of the Civil Procedure Code ("the Code" for short) (since the liabilities arise under an award, the petitioner is also referred as "judgment creditor" and the respondent as "judgment debtor" hereinafter).

This is a very interesting matter wherein as regards facts there is no dispute between the parties. Practically both the parties rely upon the same provisions of law in support of their respective contentions but giving different interpretations, therefore, the only question would be about interpretation of relevant provisions of the Ordinance and its applicability. The statement of object and reasons for enacting present Ordinance may be of little help for appreciating rival contentions. But, before going to the statement of object and reasons, it would be worthwhile to make a short reference to various enactments relating to Arbitral proceedings in India prevailing prior to promulgation of the Ordinance, 1996. Indian Arbitration Act, 1940 relates to domestic arbitral proceedings. It is a consolidated and self-contained Act

providing for reference of dispute and appointment of arbitrator, initiation of proceedings, publication of award, procedure for shaping award as decree so as to make it executable, the extent of interference by Court in arbitral proceedings, etc.

At the same time, the Arbitration Act, 1940 was silent about foreign awards, its binding nature, enforcement and execution. Therefore, in order to recognise foreign awards and its enforceability, two enactments were in force (i) Foreign Awards (Recognition and Enforcement) Act, 1961 based on the convention for the recognition and enforcement of foreign arbitral awards executed at New York in the year 1958 and (ii) Arbitration (Protocol and Convention) Act, 1937, based on Geneva Convention making foreign arbitral awards binding to the signatory countries to that award. Since India was also signatory to both the conventions, both the Acts were in force in India. By and large, the provisions of Foreign Awards (Recognition and Enforcement) Act, 1961 and Arbitration (Protocol and Convention) Act, 1937 are almost identical. Both these Acts refer to the effect of foreign award, and procedure for execution in India and its recognition as an award passed by domestic Tribunal giving shape of decree and making enforceable, fulfillment of conditions before enforcement of foreign awards and the evidence to be produced by the parties for arriving satisfaction qua enforceability and shaping foreign award as a decree of civil Court for the purpose of execution. Since signatories to both the conventions were different countries, two separate enactments are made, otherwise all the provisions are same. Hence recognition of a foreign award under either of the Act does not make any difference.

#### NEED FOR PROMULGATION OF ORDINANCE 1996:

Well recognised mode of recognition of disputes is through the mechanism of sovereign powers, i.e., Courts. The judicial system prevalent in Courts is governed by procedure prescribed under various enactments. Many provisions are very technical and have become synonym for technicalities, obstructions causing delay. The procedure is so cumbersome that many a times decades are taken for final resolution of disputes. The cumbersome procedure and protracted litigation becomes very costly in terms of money, time and energy and once a person gets in it, finds difficult to extricate himself even if he manages and gets frustrated, exhausted mentally, physically and financially. Businessmen are now very much concerned in the finality than in the legality of

differences so that they know as to where they stand and to what extent the fruits are to be ripen. Therefore, alternative mechanism for resolution of disputes is evolved by reference of disputes to domestic Tribunal i.e., arbitral proceedings. It is indeed intended to ensure fair and efficient and speedy trial giving finality to the decision. It is also intended to minimise the supervisory role of Courts and enhance the assistance. In other words, the main object is to drastically curtail supervisory role of Courts, demolish various stages and proceedings through which an award was required to pass through in the mechanism of old enactments so that the object of speedy resolution of dispute is achieved.

As discussed above, the Indian Arbitration Act, 1940 dealt with domestic arbitration only, whereas two other enactments were in force for recognition of foreign awards. Thus, a litigant was required to take recourse to the provisions of several enactments for execution of foreign award. Hence, the object of this Ordinance is also consolidated and amend the law relating to domestic arbitration, international commercial arbitration and enforcement of foreign arbitral awards and to define the law relating to conciliation. Keeping in mind the mandate, the willing Nations came on International Trade Law so as to make Indian Law relating to arbitration responsive to the contemporary requirement and make its economic requirements effective.

We now come to the Arbitration and Conciliation Ordinance, 1996 which was promulgated on 16.1.1996 and brought into force with effect from 25.1.1996. The second Ordinance 1996 was also promulgated on 26.3.1991 as a supplement to main Ordinance giving retrospective effect from 25.1.1996. The ordinance received assent of the President on 16.8.1996, giving the retrospective effect from 25.1.1996. Thus, the Ordinance has now become an Act. All the provisions of the Ordinance as well as Act are same. Therefore, the use of word "The Ordinance" shall also mean the Act and vice a versa.

With this brief introduction to the law of arbitration in India prevailing prior to the Ordinance now I deal with rival contentions.

#### UNDISPUTED/ADMITTED FACTS:

The arbitral proceedings commenced in England on 1.1.1995 under the provisions of Arbitration Act, 1950 in force in United Kingdom. Award was passed on 25.2.1996. The

Arbitration and Conciliation Ordinance 1996 (now the Act) came into force with effect from 25.1.1996. Section 85 of the Ordinance/Act deals with repeal and savings clause. Section 85 of the Act is reproduced as under:

"85. (1) The Arbitration (Protocol and Convention) Act, 1937 (6 of 1937), the Arbitration Act, 1940 (10 of 1940) and the Foreign Awards (Recognition and Enforcement) Act, 1961 (45 of 1961) are hereby repealed.

(2) Notwithstanding such repeal,--

(a) the provisions of the said enactments

shall apply in relation to arbitral proceedings which commenced before this Act came into force unless otherwise agreed by the parties but this Act shall apply in relation to arbitral proceedings which commenced on or after the Act comes into force;

(b) all rules made and notifications

published, under the said enactments shall, to the extent to which they are not repugnant to this Act, be deemed respectively to have been made or issued under this Act."

Thus, three Acts relating to arbitral proceedings referred to in sub-section (1) are repealed. However, the provisions are saved in relation to arbitral proceedings commenced before the enforcement of this Ordinance/Act.

The petitioner/judgment debtor has mainly harped upon maintainability of execution proceedings on following grounds:

(i) provisions of Ordinance are not applicable by virtue of the saving clause i.e., Section 85 (2) and

(ii) alternatively, if the provisions of the Ordinance are applicable then execution in present form is not maintainable as the Indian Court has not arrived at satisfaction about enforceability of the award as required under the Ordinance,

(iii) the Court entertaining execution proceedings has no jurisdiction to try and entertain.

Contention No.1

Mr. Shah for the petitioner has argued that by clause (a) of sub-section (2) of Section 85 all the arbitral proceedings before the Act came into force are saved. In

this case, admittedly, as arbitral proceedings commenced prior to enforcement of the Act, shall be deemed to have been saved and provisions of old Act shall apply. It is true that saving clause saves arbitral proceedings commenced before the Ordinance came into force. But, at the same time, mere commencement does not confer or invest any right upon any of the parties. According to the saving clause, what is saved and preserved is the right accrued at a particular time. In this case, we are mainly concerned with the execution. The right of execution always depends upon existence of an award. But in this case, such an award was never in existence on the date of commencement. As rightly argued by Mr. Sanjanwala, the question of applicability of old provisions would have arisen had the arbitral proceedings commenced prior to the enforcement of the Ordinance had been continued and terminated thereafter. In support of this contention, Mr. Sanjanwala has relied upon decision of the Supreme Court in the case of Lalji Raja & Sons v. Hansraj Nathuram, AIR 1971 SC 974, and has argued that the repealing provisions always attract the rights acquired and privileges accrued under the law repealed by the amendment Act. The observations made in paragraph 18 of the judgment read as under and would be important for our purpose:

" . . . . . Therefore the only question that we have to consider is whether it can be considered as a 'right accrued' within the meaning of S.20 (1) (b) of the Code of Civil Procedure (Amendment) Act, 1951. In the first place, in order to get the benefit of that provision, the non-executability of the decree must be a right and secondly it must be a right that had accrued from the provisions of the repealed law."

In another judgment, in the case of Vinod Gurudas Raikar v. National Insurance Company Limited, AIR 1991 SC 2156, in terms the Supreme Court has observed that while considering question of applicability of repealing provisions, one must consider whether an accrued right has been affected. The question before the Supreme Court was about period of limitation for filing application for condonation of delay in an application under the Motor Vehicles Act. In that case accident had occurred prior to the enforcement of the new Act and the proceedings were initiated subsequently beyond the period of limitation. The question was whether it shall be governed by the old or new Act. The Supreme Court held that the mere right existing in a class of persons to

take advantage of an enactment cannot be absence of any act done by the claimant towards availing himself of that right be deemed an accrued right. Same principle has also been laid down by the Supreme Court in the case of H.I. Trust v. Haridas Mundhra, AIR 1972 SC 1826 holding that for this purpose, the Court should consider whether the right is accrued and not mere right to take advantage on the date of repeal i.e., inchoate one. If we read the saving clause it becomes abundantly clear that what is intended to save is the right accrued or acquired.

In this case, initiation of arbitral proceedings before the enforcement of the Ordinance was merely an expectation of hope of acquiring right of getting an award and reaping fruits therefrom by way of execution. It cannot be gainsaid that the right of execution was never in existence or force on the date of commencement of the new Act. Even reading clause 6 of General Clauses Act also it becomes abundantly clear that the repeal shall not revive anything not in force or existing at the time when the repeal took effect. The execution was not an accrued right under the old Act and/or had never been initiated as such hence the provisions saved can never apply.

As argued by Mr. Sanjanwala, it is true that by the Ordinance all the three Acts i.e., the Arbitration (Protocol and Convention) Act, 1937, the Indian Arbitration Act, 1940 and the Foreign Awards (Recognition and Enforcement) Act, 1961 are repealed. But the 1937 and 1961 Acts simpliciter deal with execution of foreign awards. The execution proceedings which were in force and pending only would stand saved on the date of enforcement of the new Act. In this case the award was never in existence hence the question of applicability of saving clause qua the execution of a right which accrued subsequently, does not arise. I find great force in this submission because what is saved by the repealing clause is arbitral proceedings. 1937 and 1961 Acts do not refer to any arbitral proceedings and deal with execution of foreign awards only. The arbitral proceedings are dealt with under the Indian Arbitration Act 1940 only consequently what could have been saved is any proceedings initiated under the old Act and continued at the time of commencement. 1937 and 1961 Foreign Awards Acts refer to availing the fruits of accrued right only. Execution of foreign award cannot be termed as arbitral proceedings as the arbitral proceedings come to an end, the moment award is made and published. Thereafter the award is executed as a decree of Civil Court under the provisions of Code of Civil Procedure. Therefore, even

if such an execution initiated under the old Act could not have been saved as is no more an arbitral proceedings.

Thus, keeping in mind the ratio laid down by the Supreme Court in the judgments discussed above it is clear that as the right of execution did not accrue in favour of the respondent on the date of commencement of Ordinance the saving clause cannot be invoked insisting the applicability of old provisions. For the sake of repetition, I say that repealing Section 85 is self-contained and provides for positive and negative aspect therefore is to be interpreted keeping in mind intention of legislation without taking recourse to any other provision much less section 6 of the General Clauses Act as held by the Supreme Court in the case of Indira Sohanlal v. Custodian of E.P., AIR 1956 SC 77. Even for the sake of arguments, if we refer to clause (a) to Section 6 of the General Clauses Act, it is abundantly clear that what is saved by repealing clause is the right in force and in existence unless a different intention appears that the repeal shall not revive anything not in force and not in existence at the time at which repeal takes effect. Thus, the contention about maintainability of application under old provisions being devoid of merits deserves to be rejected.

Contention No.2:

In the alternative, Mr. Shah for the petitioner has argued that even assuming that the provisions of Ordinance apply then also the procedure adopted for execution is not in consonance with the mandate and spirit of various sections and the execution in present form would not be maintainable. Inviting my attention to part II of the Act regarding enforcement of foreign awards Mr. Shah has vehemently argued that the foreign award would be binding under this Chapter and can be executed only after arriving at satisfaction about enforceability for which a separate procedure is laid down. As argued by Mr. Shah, Section 47 of the Ordinance deals with enforcement of foreign award and contemplates a separate procedure preceding actual execution. According to Mr. Shah, it is incumbent upon the party holding a foreign award to file a separate application and to produce evidence as contemplated under Section 47 and also to fulfil the conditions laid down under Section 48 and if the Court is satisfied about enforceability then only such an award shall be deemed to be a decree under Section 49 available for execution. According to Mr. Shah, before applying for execution of



a foreign award the party must separately apply to complete the stages mentioned in Sections 47, 48 and 49. In this case, admittedly, the respondent-judgment creditor has straight way applied for execution, treating the award as a decree, therefore, according to Mr. Shah, the execution is not maintainable. Mr. Shah for the petitioner has tried to distinguish between the word "enforcement" and "execution". According to him, a foreign award is not a decree and cannot be executed straight way unless tested on the anvil of the provisions of sections 47, 48 and 49 of the Act.

On careful reading of all these provisions, I am of the view that the Act does not make any distinction between "enforcement" and "execution". All throughout Part II of the Act the word used is "enforcement" only and not 'execution'. The dictionary meaning of the word "enforcement" as given in different dictionaries is as under:

The dictionary meaning of 'enforcement' given in Black's Law Dictionary, Fifth Edition reads as under:

Enforcement. The act of putting something such as a law into effect; the execution of a law; the carrying out of a mandate or command.

In P. Ramanatha Aiyar's The Law Lexicon, 1997 Edition, the meaning is given as under:

Enforcement: In the case of contracts, doing something to make the opposite party to perform his part of the contract.

In Legal Thesaurus by William C. Burton, Second Edition, the meaning is given as under:

Enforcement. administration, carrying into effect, carrying out, coercion, compulsion, compulsory execution, constraint, dictation, effectuation, exaction, execution, force, forcible urging, implementation, imposition, insistence, insistence upon, necessitation, necessity, obligation, obligation, pressure, requirement, strengthening, support.

Keeping in mind the meaning of word "enforcement" it becomes abundantly clear that what is meant by enforcement under Section 47 is nothing else but the execution as contemplated under Order 21 of the Civil Procedure Code. It is true that the award is a foreign award and before going for execution, the Indian Courts have to arrive at satisfaction about its genuineness and authenticity so that the Court may not be misled and be

an instrument for recognising an illegal, unlawful, fabricated, bogus or got up document. Section 47 provides for production of original award or copy thereof duly authenticated and the original agreement as well as any such evidence as may be necessary to the satisfaction to hold that the award is a foreign award. This procedure ensures legality, validity and existence so that the same can be executed as a decree of that Court. Once a decree is produced for execution under the provisions of Ordinance 21 of the Civil Procedure Code, there is a presumption that the same is validly in existence and is passed by a Court of competent jurisdiction after following due procedure since the executing Court is not competent to go behind and examine the relations between parties and merits of lis in existence. In case of a decree passed by any Indian Court if any doubt is created about existence or genuineness it would be within the reach of Courts to examine. In case of a foreign award, it would not be open for Indian Courts to call for records and satisfy about genuineness and authenticity, therefore, before effective steps are taken for execution as a decree, the Court must satisfy itself about the authenticity and genuineness which can only be done by taking recourse to original agreement and evidence. Original agreement would enable the Court to ensure the relationship between the parties and source of lis cropping for resolution and reference to arbitration.

The object of making provisions can be further culled out from sub-section (2) of Section 47 which says that if the award or agreement referred in sub-section (1) is foreign then the party seeking to enforce the award shall produce a translation into English certified as correct by a diplomatic or consular agent of the country to which that party belongs or certified as correct in such other manner as may be sufficient according to the law in force in India. In my view, this is done just to strengthen the belief of the Court about relationship, lis, reference and resolution by following due procedure and that the award for execution as a decree is a genuine and authenticated one. Section 48 lays down provisions for enforcement of foreign award and also the discretion of Indian Court to refuse execution. If the contesting party, i.e., a party against whom execution is invoked furnishes to the Court proof that (1) the parties to the agreement were under some incapacity or that the agreement was not valid under the law to which the parties have subjected, (2) that the party against whom award is invoked was not given proper notice of appointment of arbitrator or of the arbitral proceedings

or was otherwise unable to present his case, (3) that the award deals with a difference not contemplated by or not falling within the terms of the submissions to arbitration or it contains decisions on matters beyond the scope of the submission to arbitration, (4) the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties and (5) the award has not yet become binding on parties or has been set aside or suspended by competent authority of the country in which the award is made.

Thus it become clearly evident that the conditions to be fulfilled before enforcement are to satisfy the Court about the validity, legality and correctness of award so that it can be executed as a decree. Enforcement of such an award can also be refused if the Court finds that the subject matter of award is not capable of settlement by arbitration law of India or that enforcement of award would be contrary to the public policy of India. Explanation further provides that if the award is in conflict with the public policy of India and the making of the award was induced or affected by fraud or corruption, enforcement can be refused. Similarly, if an application for setting aside or suspension of the award has been made to a competent authority, enforcement can be refused. If we look at the provisions of Order 21 of Civil Procedure Code relating to execution of an ordinary decree passed by Civil Court same and similar grounds are available for challenging execution and the Court may in its discretion refuse execution. It cannot be gainsaid that if the decree is nullity or against public policy or that is under challenge by way of pending application for setting aside or that the decree is not genuine or otherwise invalid according to law in force no separate procedure is provided for challenging execution. It is in the same execution proceedings that judgment debtor can raise objections and if Court is satisfied, may refuse the execution. Applying similar analogy the satisfaction about enforceability of a foreign award as a decree of that Court can be arrived in the same proceedings and not by initiating separate proceedings. By such satisfaction the Court ensures about the genuineness, authenticity, legality and validity so that the party against whom it is invoked may not be put to inconvenience and suffer injustice and is protected from any fraudulent transaction.

If an object can be achieved in the same proceedings why to go for separate procedure leading to multiplicity of litigation? It is abundantly clear that a foreign award and a decree of Indian Civil Court is executable under

the same provisions and if satisfaction about enforceability of civil decree can be achieved in the same proceedings why there should be any discrimination and adopt a separate procedure for foreign award? Order 21 of the Civil Procedure Code does not make any such distinction and discrimination. If this view is accepted, the interpretation would lead to absurdity which can never be the intention of the legislature. Even in the case of Tirath Singh v. Bachittar Singh, AIR 1955 SC 830, the Apex Court has held that a meaning leading to absurdity cannot be given to any statute.

As discussed in above paragraph, the object of the new Act is to minimise supervisory role of Court and to give speedy justice. To achieve the object the stage of approaching Court for making award a rule of Court in Arbitration Act 1940 is abolished in new Act. Despite this if the concept of separate proceedings for arriving at satisfaction is introduced, it would frustrate the object of the Act/Ordinance. My aforesaid view also gets fortified by the object for which the Bill was brought. Clause 4 of the statement of object and reasons reads as under:

" xxx xxx xxxx

(v) to minimise the supervisory role of  
Courts in the arbitral process;

(vi) xxx xxx xxx

(vii) to provide that every final arbitral  
award is enforced in the same manner as  
if it were a decree of the Court;

(viii) x x x x x x

(ix) to provide that, for purposes of  
enforcement of foreign awards, every  
arbitral award made in a country to which  
one of the two international Conventions  
relating to foreign arbitral awards to  
which India is a party applies, will be  
treated as a foreign award".

As we know, under the old Act after making award and prior to execution there was a procedure for filing and making an award a rule of Court, that is a decree. Since the object of the New Act is to provide speedy and alternative solution of dispute and avoid more and more intervention and supervisory role of Court, in my view, it would be lost and frustrated if a procedure as suggested by Mr. Shah is introduced. As argued by Mr. Shah, if at all for the purpose of arriving satisfaction about enforceability a separate procedure is introduced to be initiated then there would not be any reduction in

the extent of supervisory role as provided under the old Act and the new Act. If separate procedure is resorted, it would only add to the miseries of litigants who would suffer in terms of money, time and energy and one would get it difficult to extricate himself and would be frustrated and exhausted mentally, physically and financially.

It is true that the rules of interpretation of statements prohibit Court from taking recourse to statement of objects and reasons while interpreting the provisions of the Act. On this point Mr. Shah has relied upon judgment of the Supreme Court in the case of State of Haryana v. Chanan Mal AIR 1976 SC 1654 and in the case of Central Bank of India v. Their Workmen, AIR 1960 SC, 12. The statement of object and reasons cannot control the meanings of actual words used in the section. Similarly, the interpretation also cannot enlarge the meaning of statute. Relying upon the above judgments, Mr. Shah for the petitioner has argued that on plain reading of Sections 47, 48 and 49 one can safely infer that a separate procedure is contemplated and the language used is so simple that only one meaning can be given hence statement of objects and reasons should not be given much importance. But as discussed above, in my view, it does not contemplate separate procedure and the satisfaction of enforceability has to be arrived at in the same proceedings as is in case of execution of an ordinary civil decree passed by a Civil Court.

The view canvassed by Mr. Shah for the judgment debtor petitioner cannot be accepted for the simple reason that Section 46 of the Ordinance provides for presumption about enforceability and binding effect of foreign award. It says that any foreign award which is enforceable shall be treated as binding for all purposes on all persons between whom it was made and may accordingly be relied on by any of those persons by way of defence, set off or otherwise in any legal proceedings in India in any reference unless the Court is not satisfied about enforceability under Section 48 of the Act. Under Section 48, on being not satisfied by the award, the Court exercising jurisdiction can refuse execution. Under Section 48, duty is cast upon judgment debtor against whom award operates to satisfy the Court about non-enforceability. Therefore, the duty cast upon the party against whom it operates can be treated as rebuttal evidence so as to challenge the presumption. This can be adduced in the same proceedings and not by initiating separate proceedings as is done in case of ordinary civil litigation. Therefore, on this count also the contention

of Mr. Shah for the petitioner would not be tenable.

Contention No. 3:

The third and last ground of challenge is about jurisdiction of Court which passed the impugned order. In this case, the impugned order has been passed by the Joint District Judge, Bhavnagar. Relying upon the definition "Court" as defined in Section 2 (e) Mr. Shah has argued that it shall be the principal Civil Court of original jurisdiction in district to entertain any application under the Act. The word 'Court' is defined in section 2 (e) as under:

"'Court' means the principal Civil Court of original jurisdiction in a district, and include the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not include any Civil Court of a grade inferior to such principal Civil Court, or any Court of Small Causes".

Section 47 of the Ordinance deals with application for enforcement before the Court and in explanation the word 'Court' is again defined as the principal Court of original jurisdiction in a district. Now the question is as to which Court shall be the principal Court of original jurisdiction. Whether the District Court alone or all other Courts of the same cadre exercising concurrent and coextensive jurisdiction? For this, Mr. Shah has relied upon Section 7 of the Bombay Civil Courts Act, 1869 which reads as under:

"Original Jurisdiction of District Court:- The District Court shall be the principal Court of original civil jurisdiction in the district, within the meaning of the Code of Civil Procedure."

Thus, according to Mr. Shah, the District Court alone is the principal Court of original civil jurisdiction and has jurisdiction to entertain execution and not the Court of Joint District Judge. In the alternative, relying upon Sections 15 and 16 of the Civil Procedure Code Mr. Shah has argued that the application should have been preferred in the Court of Civil Judge (S.D.), which is the Court of lowest grade to try and entertain and the property of the petitioner is situated within the territorial jurisdiction thereof.

It is true that even under the Bombay Civil Courts Act the District Court is considered as the principal Court of original civil jurisdiction and even under the Ordinance also the word Court is defined as the principal Court of original civil jurisdiction. Mr. Sanjanwala, learned advocate for the respondent, has argued that the powers of the Joint District Judge are coextensive and concurrent with that of the District Judge as defined under Section 12 of the Bombay Civil Courts Act, therefore, shall also be construed as the principal Court of original civil jurisdiction and shall have jurisdiction to entertain execution.

Section 12 of the Bombay Civil Courts Act, 1869 reads as under:

"Power to appoint Joint Judges:- The State Government may appoint in any District a Joint Judge who shall be invested with coextensive powers and a concurrent jurisdiction with the District Judge, except that he shall not keep a file of civil suits and shall transact such civil business only as he may receive from the District Judge, or as may have been referred to the Joint Judge by order of the High Court."

Thus, on plain reading of Section 12, it is abundantly clear that the powers of Joint District Judge are one and same with coextensive powers and concurrent jurisdiction with the District Judge. Therefore, in my view, for all practical purposes, joint District Judge is a District Judge having coextensive and concurrent jurisdiction for discharging judicial functions, consequently, would also be principal Court of original civil jurisdiction as defined under Section 2 (e) of the Ordinance and would have jurisdiction to entertain execution.

An identical question arose before this Court with regard to exercise of criminal jurisdiction by 'Special Court' under The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 ('Atrocity Act' for short). This Court in the case of B. B. Chavda v. State 1993 (1) GLR 317 held that Additional Sessions and Assistant Sessions Judges appointed by High Court are empowered to exercise jurisdiction of Sessions Judge and there would be no illegality if the powers of Special Judge appointed under Section 14 of the Atrocity Act are exercised by the Assistant or Additional Sessions Judge. In another judgment in the case of Kumar Gangaram v. Estate Officer, G.H.B, 1990 (2) GLR 1006, this Court held that by virtue of Sections 12 and 13 of the Bombay Civil Courts Act, the Joint District Judge to whom the matter

is transferred by the District Judge has competence to hear the appeal under Section 9 of the Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1972 which in terms provides that the powers have to be exercised by District Judge only.

Sections 15 and 16 of the Civil Procedure Code as relied upon by Mr. Shah for the petitioner will have no application in this case as the application of general law is specifically barred by defining the word "Court" under the Special Act i.e., Ordinance. The District Court has been conferred special powers to deal with matters arising under the Act, no other Court (which otherwise under the general provisions i.e., Sections 15 and 16 of the Civil Procedure Code can exercise) shall have powers to entertain execution.

It is also contended by the learned advocate for the petitioner that the Court of District Judge is a persona designata under the Act, therefore, the District Judge/District Court alone shall have powers to exercise the jurisdiction. On this point Mr. Shah has relied upon decision of Shivilal Amarji v. Maganlal, 1966 GLR 802. The contention has no force in law for the simple reason that jurisdiction defined in the Act is upon the Court of a particular cadre and not to a person occupying the Court. Under these circumstances, I hold that the powers of Joint District Judge are coextensive and concurrent for all purposes in discharge of judicial functions and that the words "District Judge/District Court" shall mean and include Joint District Judge/Joint District Court, consequently the powers which under a particular statute are to be discharged by the District Court can also be discharged by Court of Joint District Judge. Thus, in my view, I do not find any illegality in entertaining the application in question by the Court of Joint District Judge. It is true that the respondent/judgment creditor moved an application for transfer of matter from Assistant District Judge, Mahuva, to District Judge, Bhavnagar. But that does not mean that the District Judge alone shall deal with the matter. This was rightly done as Assistant Judge has no concurrent and coextensive jurisdiction with that of District Judge and had no jurisdiction to entertain.

Under these circumstances, I hold that the impugned order does not suffer from any illegality or want of jurisdiction. The impugned order conforms all the legal parameters and does not warrant any interference in exercise of revisional jurisdiction under Section 115 of the Civil Procedure Code.



In the result, the petition is hereby dismissed. Rule is discharged. No order as to costs.